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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DAHESI NIGEL ROARK,

Defendant and Appellant.

A151503

(Solano County
Super. Ct. No. VCR222819)

Defendant Dahesi Nigel Roark was convicted of first degree residential robbery and found to have multiple prior serious or violent felony convictions. Almost a year after trial but before sentencing, defense counsel expressed doubt as to Roark's competence "moving forward," and the trial court ordered two psychological evaluations. At a subsequent hearing on the matter, defense counsel submitted the issue of competence on the psychologists' reports, and the trial court found Roark competent. Roark was sentenced to 30 years to life in prison.

Roark's appeal arises from the competency determination only. He contends there was insufficient evidence to support the trial court's finding of competence, and the court erred in failing to refer him to the regional center for the developmentally disabled (Regional Center) for assessment. We affirm.

BACKGROUND

In March 2016, a jury found Roark guilty of first degree residential robbery and found true the allegation the residence was inhabited. In a subsequent court trial, the court found Roark had three prior serious felony convictions within the meaning of Penal

Code¹ section 667, subdivision(a)(1), three prior serious or violent felony convictions within the meaning of section 667, subdivisions (b)–(i), and had served three prior prison terms (§ 667.5).

On March 6, 2017, the date scheduled for judgment and sentencing, defense counsel filed a *Romero* motion to strike Roark’s prior convictions arguing, among other things, that evidence of Roark’s developmental disability justified dismissal of his prior “strike” convictions.² In a declaration filed in support of the *Romero* motion, neuropsychologist Dr. Howard Friedman stated that he had examined Roark in 2001 and offered his opinion at that time that Roark was developmentally disabled. More recently, Friedman evaluated Roark in July and September 2016 and concluded Roark continued to have a mild intellectual disability. He found Roark “functions equivalent to a 5 year old regarding his language comprehension.”³

At the court hearing that day, defense counsel also raised a doubt as to Roark’s competence. He told the court, “There’s another issue, your Honor, based upon my filings and my interaction with Mr. Roark for over several years’ period of time, and my review of the case law, I think it’s prudent to declare a doubt about his competency moving forward. I think, based upon his long history of developmental disability, I think we should probably have this thing sent to the Regional Center for evaluation as to whether or not he is or is not developmentally disabled.”

¹ Further undesignated statutory references are to the Penal Code.

² There was a long delay between Roark’s conviction and sentencing because Roark was facing a life sentence under the Three-Strikes Law, and defense counsel requested and was granted repeated continuances to give counsel time to prepare a *Romero* motion.

³ Friedman did not expressly opine that Roark was incompetent to be sentenced, but he wrote in a letter attached to the *Romero* motion, “There are questionable elements of his competency. In particular, he has limitations with any understanding of legal concepts and facts. . . . He is simplistic in his reasoning and how he can apply his limited knowledge base to any rational understanding of the legal situation. [Roark’s c]apacity to assist attorney is limited by virtue of his poor intellectual functioning as, again, his thinking is quite simplistic and repetitive.”

The court asked whether Roark had been a client of the Regional Center before. Defense counsel responded no, but “I reviewed the case law, I think based upon my analysis, knowing what I know, I don’t want this thing to come back for a retro grade [sic] competency.”

The court stated, “I think I need to do the standard process. In the event through the standard process, the traditional process we determine that additional steps, as a result of disability are in order, we take those steps. But if he’s never been a Regional Center client, I’m not going to do that at this point. Can we stipulate to one doctor or do you want two?” Defense counsel asked for two evaluators.

The court suspending criminal proceedings and appointed Drs. O’Meara and Nakagawa to evaluate Roark.

Both court-appointed psychologists interviewed Roark and concluded he was competent. After the psychologists submitted their reports, at a hearing on April 6, 2017, defense counsel and the prosecutor submitted on the reports. Defense counsel also said, “I reviewed both Dr. O’Meara and the other doctor’s report this morning and it appears he’s competent.” Relying on the doctors’ reports, the trial court reinstated criminal proceedings and eventually sentenced Roark.

DISCUSSION

“A defendant who is mentally incompetent cannot be tried or adjudged to punishment. (§ 1367, subd. (a); *Pate v. Robinson* (1966) 383 U.S. 375, 378.) A defendant is mentally incompetent to stand trial if, as a result of mental disorder or developmental disability, the defendant is ‘unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.’ (§ 1367, subd. (a).) The defendant has the burden of proving incompetency by a preponderance of the evidence. (§ 1369, subd. (f); *People v. Medina* (1990) 51 Cal.3d 870, 881–886.” (*People v. Marshall* (1997) 15 Cal.4th 1, 31.)

A. Sufficiency of the Evidence

Roark contends there was no substantial evidence to support the court’s finding that he was competent. We review the trial court’s finding “for support by substantial

evidence in the record—that is, for evidence that is reasonable, credible, and of solid value.” (*People v. Jackson* (2018) 22 Cal.App.5th 374, 392.)

Here, two psychologists evaluated Roark in person and submitted reports to the court concluding he was competent. Dr. Janice Nakagawa interviewed Roark at the county jail on March 29, 2017. He was then 36 years old. Roark reported that he was in special education classes from seventh grade until he left school in tenth grade “ ‘because of drugs.’ ” He stated he “ ‘was on SSI since [he] was a kid’ ” because “ ‘they said [he] was mentally retarded’ ” Roark said he was designated “DD1” in jail, which referred to the presence of developmental delays or disability. Nakagawa found “[c]ognitively, [Roark’s] fund of information was limited. . . . Verbal abstraction abilities (his understanding of how two items are alike) were grossly intact but he tended to be simplistic and concrete in thinking Overall, intellectual functioning was estimated to be in the borderline range.”

Nakagawa gave her opinion that Roark was competent. She found, “with respect to his understanding of various aspects of criminal proceedings, it was evident that Mr. Roark did not have any difficulties. He was able to identify various pleas such as guilty, not guilty, as well as roles and functions of courtroom officials. He was also able to demonstrate understanding of his rights and responsibilities as a defendant.” By his own admission, Roark knew he had been found guilty of robbery by a jury and a life sentence was possible. (She noted Roark said, “ ‘Maybe I’m looking at 3 strikes—I don’t know—I’m confused.’ ”) Nakagawa wrote, “Despite his voiced confusion, [my] impression was that there was no notable difficulties about his understanding due to any mental health problems. *With respect to competency issues, Mr. Roark certainly is able to understand the nature and purpose of proceedings being taken against him and he can assist counsel in matters pertaining to his case.*” (Italics added.)

Dr. Kathleen O’Meara interviewed Roark at the county jail on March 31, 2017. In preparation for the interview, she reviewed the criminal complaints, his probation presentence report, and his jail medical/psychiatric chart. She noted that Roark’s reading skills were poor and “he gets help from others when he needs to comprehend written

material.” She also noted that he served 11 years in prison for a prior robbery “during which time he was identified as suffering a mild developmental disability (DD1) and requiring mental health case management.” O’Meara wrote that Roark identified the charges against him and that he knew he could serve a lengthy prison term “if convicted.” He knew it was “possibly a third strike.” Roark also believed his competency “was being questioned because ‘I’m developmentally disabled.’ ”⁴

O’Meara gave her opinion that Roark was competent to stand trial. She wrote, “He has an adequate appreciation of the nature and purpose of the proceedings taken against him and he is capable of cooperating rationally with counsel in preparing his defense.” O’Meara noted that Roark understood the roles of his attorney, the district attorney, the judge, and witnesses. She continued, “The defendant appears to be of below average intellectual functioning. However, he does understand the nature of the charges against him and that he faces a possible serious penalty involving prison confinement. . . . He appears capable of providing reasonable assistance to his attorney.”

Defense counsel was entitled to offer evidence in support of his allegation of mental incompetence and to offer testimony to rebut the court-appointed evaluators, but he chose not to. (§ 1369, subd. (b)–(d).)

“[A] single witness may establish any fact. [Citations.] It is ‘not the role of this court to redetermine the credibility of experts or to reweigh the relative strength of their conclusions.’ ” (*People v. Kirvin* (2014) 231 Cal.App.4th 1507, 1514 (*Kirvin*)). The reports of Drs. Nakagawa and O’Meara provide substantial evidence for the trial court’s determination that Roark was competent to be sentenced.

For the first time on appeal, Roark challenges both doctors’ evaluations based on “absence of any evidence that either O’Meara or Nakagawa was qualified to opine whether [Roark] had an intellectual disability and whether that disability rendered [him]

⁴ Roark argues O’Meara mistakenly believed his trial was pending when she interviewed him. The record on this point is ambiguous. O’Meara read the probation presentence report before meeting Roark, but she also noted that Roark faced a lengthy prison term “if convicted.”

incompetent.” These challenges fail because “defendants may not attack the validity of expert reports to which they submit with arguments they did not present to the trial court.” (*Kirvin, supra*, 231 Cal.App.4th at p. 1514.) This is because “unlike the adjudication of criminal guilt, which presumes a defendant’s innocence and places the burden of proof on the state, [a] defendant is presumed competent.” (*People v. Blacksher* (2011) 52 Cal.4th 769, 797 (*Blacksher*).) When the issue of competency is raised, the defendant assumes the burden of proof. (*Ibid.*, citing §§ 1096, 1369, subd. (f).) “Under these circumstances, by failing to object below, [the] defendant deprive[s] the prosecution of the opportunity to rebut any objections with evidence supporting the presumption of competency. (*Ibid.*)

At the hearing on April 6, 2017, defense counsel could have objected to the evaluators’ reports on the grounds he raises now. In response, the prosecution could have presented evidence of the psychologists’ qualifications and called them as witnesses to opine more specifically on how Roark’s developmental or intellectual disability affected his competency. (§ 1369, subd. (c).) But having failed to raise these objections at trial, Roark has forfeited these claims on appeal. (See *Blacksher, supra*, 52 Cal.4th at pp. 797–798 [where defendant submitted the question of competency on doctors’ reports, he forfeited appellate claim that the trial court erred in relying on allegedly insufficient reports]; *People v. Weaver* (2001) 26 Cal.4th 876, 904 [“To the extent defendant attempts to impugn the validity of the appointed experts’ conclusions . . . , the time to raise such a challenge has long since passed. Having submitted the competency determination on the two psychiatric reports, defendant may not now relitigate that question with arguments he did not make below.”].)

In short, the two psychologists’ reports in the record are sufficient evidence of competence, and Roark has forfeited his challenges to the psychologists’ qualifications and assessments.

B. *Failing to Refer Roark to the Regional Center*

Next, Roark argues the trial court erred in refusing to refer him to the Regional Center for evaluation.

Section 1369 governs the conduct of a trial on mental competence. Subdivision (a), of the statute provides in relevant part, “The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. . . . The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant’s mental disorder, if any, the defendant’s ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder *If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the designee of the director, to examine the defendant.*” (Italics added.)

Our Supreme Court has recognized that an error in failing to appoint the director of the Regional Center or her designee is not a jurisdictional error that necessarily requires reversal of an ensuing judgment. (*People v. Leonard* (2007) 40 Cal.4th 1370, 1389 (*Leonard*).) In *Leonard*, the defendant Leonard had epilepsy, a developmental disability, and the trial court did not appoint the director of the Regional Center to examine him as required under section 1369 when a doubt was raised as to Leonard’s competence. (*Id.* at p. 1388.) Leonard argued this statutory violation required reversal of his subsequent conviction and death sentence, but the Supreme Court disagreed. Rather, the court held Leonard’s ensuing convictions and sentence “need not be reversed unless the error deprived him of a fair trial to determine his competency.” (*Id.* at p. 1390.) The court concluded the failure to appoint the director of the Regional Center to examine Leonard did not prejudice him because he was evaluated by doctors who were experienced in the field of developmental disabilities. (*Id.* at p. 1391.)

Here, we see no prejudice resulting from the trial court’s denial of the request for a referral to the Regional Center. The trial court did not foreclose the possibility of referring Roark to the Regional Center at a later date. To the contrary, the court indicated that if the appointed psychologists’ evaluations revealed that such a referral was “in order, we [will] take those steps.” At the April 6, 2017, hearing, defense counsel could

have argued the two evaluators' reports were inadequate (or argued that the reports confirmed Roark had a developmental disability that required further evaluation) and renewed his request for a referral to the Regional Center if he believed it was necessary to fairly assess Roark's competence. But defense counsel chose to submit on the reports instead. As we have seen, Roark was interviewed and evaluated by two psychologists who were aware of his limited intellectual functioning and prior designation as developmentally disabled and nonetheless concluded he was competent, and defense counsel, after reviewing their reports, agreed "it appears he's competent." On this record, we cannot say the trial court's initial denial of the request for a referral to the Regional Center deprived Roark of a fair trial to determine his competency.

DISPOSITION

The judgment is affirmed.

Miller, J.

We concur:

Kline, P.J.

Richman, J.

A151503, *People v. Roark*